

Appl. No. 10/815,717

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REMARKS/ARGUMENTS**Claim Rejections – 35 USC 103**

The Examiner rejects claims 1-8, 10-17, 25-28, 30-32 and 34 under 35 USC 103(a) as being unpatentable over United States application No. 2002/0058502 ("Stanforth") in view of United States patent No. 7,016,648 ("Haller"). In response, Applicant respectfully traverses the Examiner's rejection, as the Examiner has not fulfilled the requirements for establishing a *prima facie* case of obviousness under 35 USC 103. To establish a *prima facie* case of obviousness under 35 USC 103, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Also, there must be some suggestion or motivation either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings in a manner that would arrive at Applicant's invention as claimed. Applicant's analysis below demonstrates that the Examiner has not satisfied these basic requirements.

Requirement to Teach or Suggest All Claim Limitations

Regarding claim 1, the Examiner contends that Stanforth teaches "a mobile station adapted to participate in wireless PMP (point-to-point) communications by communicating directly with a cellular base station using cellular communications signals transmitted on a cellular spectral resource" (emphasis added) in paragraph 0038, 0041 and 0044. Applicant respectfully disagrees with the Examiner, as Haller does not teach or suggest a mobile station communicating directing with a cellular base station using cellular communications signals transmitted on a cellular spectral resource. Rather, Stanforth teaches a mobile terminal communicating with a router/gateway, which in turn communicates with an MSC. For instance, with reference to Figure 4 the mobile terminal 12 communicates directly with the router 14, which is coupled to the MSC 20 via the gateway 16 and the gateway controller 18. Figures 6 through 8 provide signalling drawings showing the mobile terminal communicating with the router/gateway. Paragraphs 0038, 0041 and 0044 of Stanforth similarly teach that the mobile terminal communicates via the gateway controller 18. Applicant submits that communicating with a router/gateway is completely different from communicating directly with a cellular base

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station using cellular communication signals transmitted on a cellular spectral resource as defined by claim 1 of the present application, as the router/gateway in Stanforth is not a cellular base station.

Although Applicant believes it is clear that the router/gateway in Stanforth is not a cellular base station, Applicant points to portions in Stanforth that confirm that the router/gateway is not a cellular base station. Stanforth describes in paragraph 0038 that "Routers and gateway nodes are also used, as described hereinbelow, for connecting ad-hoc terminals 12 serviced by one gateway to another ad-hoc terminal serviced by another gateway, as disclosed in above-mentioned [commonly-owned] application Ser. No. 09/815,157." (emphasis added) Stanforth describes the commonly-owned application earlier in paragraph 0009 and states that "The ad-hoc, peer-to-peer radio system of this patent does not have, nor require, a base station, as conventional cellular systems, personal communications system (PCC), and the like, require." (emphasis added) Therefore, Applicant submits that Stanforth teaches that the ad-hoc peer-to-peer radio system, which has routers/gateways, does not have base stations as in conventional cellular systems. This implies that the routers/gateway in Stanforth is not a cellular base station, and that Stanforth explicitly teaches away from using a base station as such.

The Examiner concedes that Stanforth does not teach that the mobile station is adapted to participate in wireless P2P (peer-to-peer) communications by communicating directly with another mobile station using signals in form similar to the cellular communications signals and using said cellular spectral resource, wherein, the cellular communications signals are CDMA (code division multiple access) signals or OFDM (orthogonal frequency division multiplexing) signals. In view of the Examiner's admitted difference between Applicant's claimed invention and Stanforth, the Examiner looks to the disclosure of Haller. However, Applicant submits that Haller does not teach or suggest a mobile station adapted to communicate directly with another mobile station using signals in form similar to the cellular communication signals and using said cellular spectral resource. Rather, Haller teaches that completely different communication signals are used. For instance, with reference to Figure 1A, Haller teaches that the device 106 communicates using cellular signals 111 to a wireless network, and communicates using short-range radio signals 110 to other devices such as the PDA 107B and the laptop 107D. Clearly the

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short-range radio signals 110 are not the same as the cellular signals 111. This is evident from column 4 line 47 to column 5 line 7 in which Haller teaches communication means, such as Bluetooth and 802.11, to other devices. Bluetooth and 802.11 are not cellular signals. Therefore, Haller teaches away from communicating directly with another mobile station using signals in form similar to the cellular communication signals and using said cellular spectral resource.

In view of the foregoing, it is respectfully submitted that claim 1 of the present application recites features not found in either of Stanforth and Haller.

Applicant submits that the remaining claims recite features not found in either of Stanforth and Haller for similar reasons provided above in respect of independent claim 1. Furthermore, Applicant submits that the Examiner's arguments that the remaining claims are obvious are without basis. Examples are provided below.

Claim 3 defines that the mobile station has at least two receivers: a first receiver for receiving PMP communications on a downlink PMP band, and a second receiver for receiving PMP communications on an uplink PMP band. The Examiner contends that Stanforth teaches this feature in paragraphs 0038, 0041, and 0044. However, none of these portions teach or suggest a mobile station with at least two receivers. Applicant appreciates that Stanforth teaches "a plurality of mobile radio terminals 12 capable of receiving and transmitting at least one of voice and data communications" in paragraph 0038, but this does not suggest that any of the mobile terminals have at least two receivers.

Claim 4 defines further features relating to the at least two receivers. Applicant submits that the Stanforth does not teach these features for the same reasons provided above for claim 3.

Claim 6 defines how the mobile device listens to PMP communications from the network on the downlink PMP band for maintenance purposes. The Examiner contends that Stanforth teaches this feature in paragraphs 0038, 0041, and 0044. However, none of these portions teach or suggest a mobile station listening to PMP communications for maintenance purposes. Applicant submits that Stanforth is silent with respect to listening to PMP communications for maintenance purposes.

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Claim 8 defines that the mobile station is adapted to maintain linked state transitions between states for PMP communications and at least one state for P2P communications. The Examiner contends that Stanforth teaches this feature in Figure 3a, and paragraphs 0038, 0041, and 0044. However, none of these portions teach or suggest a mobile station maintaining linked state transitions between states for PMP communications and at least one state for P2P communications. Applicant appreciates that Stanforth teaches P2P and PMP; however, Stanforth is silent with respect to maintaining linked state transitions between states for PMP communications and at least one state for P2P communications.

Requirement to Establish Motivation to Combine References

Applicant notes that Section 2143.01 of the Manual of Patent Examining Procedure (MPEP) sets out three possible sources of motivation to combine, namely A) the nature of the problem to be solved, B) the teachings of the prior art, and C) the knowledge of persons of ordinary skill in the art. It is respectfully submitted that the Examiner has not established a motivation to combine the references from any one of the three sources.

A. The Nature of the Problem to be Solved

The nature of the problem to be solved in Stanforth and Haller are quite different. The problem to be solved in Stanforth is how "to provide an ad-hoc peer-to-peer radio access system that has the capability of interconnection with the switched cellular network, the PSTN, the Internet, and other networks" (see paragraph 0013). By contrast, the problem to be solved in Haller is how "to provide a method, a system, and a computer readable medium that easily and conveniently provides a software component to a device in a short distance wireless network with little or no user, retailer, distributor or manufacturer intervention" (see column 1, lines 50-57). Applicant submits that providing an ad-hoc peer-to-peer radio access system with interconnections to a variety of different networks is completely different than providing a software component to a device over a short distance wireless network. Therefore, there can be no motivation to combine Stanforth and Haller from the nature of the problems to which they set out to solve.

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B. the Teachings of the Prior Art

There is no teaching, suggestion, or motivation to combine Stanforth and Haller in the references themselves. Applicant notes that Stanforth and Haller do not refer to one another in their disclosures. Applicant further notes that the list of references cited in Haller does not include Stanforth; Stanforth does not list any references. Furthermore, Stanforth and Haller have different international and United States classifications. Accordingly, Applicant submits that there is no suggestion in the cited references to combine the disclosures of Stanforth and Haller.

C. the Knowledge of Persons of Ordinary Skill in the Art

As clearly stated *In re Kotzab*, 55 USPQ2d 1313, 1318 "Identification of prior art statements that, in abstract, appear to suggest claimed limitation does not establish prima facie obviousness without a finding as to specific understanding or principle within knowledge of skilled artisan that would have motivated one with no knowledge of invention at issue to make combination in manner claimed" [emphasis added]. Applicant submits that the Examiner has not demonstrated suggestion in the knowledge of persons of ordinary skill in the art to combine Stanforth and Haller in the manner claimed. Claim 1 recites features not found in Stanforth or Haller, yet the Examiner has not demonstrated any specific understanding or principle within knowledge of a skilled artisan that would suggest combining Stanforth and Haller in a manner that would arrive at such features of claim 1.

As clearly stated *In re Fine*, 5 USPQ2d 1596, 1600 "Patent and Trademark Office improperly rejected claimed invention for obviousness... since PTO therefore failed to satisfy its burden of establishing prima facie case of obviousness by showing some objective teaching or generally available knowledge that would lead one skilled in the art to combine teachings of existing references". Since the Examiner has not demonstrated an objective teaching or generally available knowledge that would lead one skilled in the art to combine Stanforth and Haller in a manner that would arrive at the claimed invention, Applicant submits that the Examiner has not fulfilled his burden of establishing motivation to combine references for establishing a *prima facie* case of obviousness.

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In view of the foregoing, it is respectfully submitted that claims 1-8, 10-17, 25-28, 30-32 and 34 of the present application is patentable over Stanforth and Haller. The Examiner is respectfully requested to reconsider and withdraw the rejection of claims 1-8, 10-17, 25-28, 30-32 and 34 under 35 USC 103(a).

In view of the foregoing, early and favorable consideration of this application is earnestly solicited.

Respectfully submitted,

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